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MAY 17 2010

OFFICE OF PETITIONS

In re Application of :
Rai et al. :
Application Number: 10/536533 : DECISION ON PETITION
Filing Date: 11/29/2005 :
Attorney Docket Number: 4544- :
051675 :

This is a decision on the petition filed on February 1, 2010, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is dismissed.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned on November 23, 2009, for failure to file a timely submit a proper reply to the final Office action mailed on May 22, 2009, which set a three (3) month shortened statutory period for reply. On November 23, 2009,² a three (3) month extension of time request was filed, along with an amendment after final rejection. On December 15, 2009, an Advisory Action Before the Filing of an Appeal Brief was mailed, stating that the reply filed on November 23, 2009, fails to place this application in condition for allowance. Notice of Abandonment was mailed on January 11, 2010.

The petition lacks the reply required by 37 CFR 1.137(b)(1). Specifically, the Request for Continued Examination (RCE) filed with the petition is not properly signed. 37 CFR 1.4(d)(2) requires that if an S-signature is used, the signer's name must be presented in printed or typed form preferably immediately below or adjacent to the S-signature. The RCE form filed with the petition, however, contains both the signature and the signer's name within slashes. As the name has not been provided without slashes, the signer's name has not been properly presented.

A properly signed RCE request form must be filed with a renewed petition.

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² As November 22, 2009 fell on a Sunday, the reply filed on Monday, November 23, 2009, is considered timely filed. 37 CFR 1.7(a).

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions